

BEFORE THE STATE ENGINEER OF OREGON

Deschutes County

IN THE MATTER OF THE APPLICATION)
OF THE CITY OF BEND, OREGON, FOR)
THE APPROVAL OF A CHANGE IN USE,)
PLACE OF USE AND POINT OF DIVER-)
SION OF WATER FROM TUMALO CREEK)
AND A CHANGE IN PLACE OF USE OF)
WATER FROM DESCHUTES RIVER.)

O R D E R
APPROVING APPLICATION

On June 13, 1957, the City of Bend, Oregon, filed an application in the office of the State Engineer for the approval of a change in use, place of use and point of diversion of water from Tumalo Creek and a change in place of use of water from Deschutes River pursuant to the provisions of ORS 540.510 to 540.530.

In the adjudication proceedings determining the relative rights to the use of the waters of Tumalo Creek and its tributaries a water right was established for the irrigation of 33 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and 22.2 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 16, Township 16 South, Range 12 East, W. M., with a date of priority of September 1900. These lands are irrigated through either the Tumalo Feed Canal or the Columbia Southern Canal, the point of diversion of the Tumalo Feed Canal being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 23, Township 17 South, Range 11 East, W. M., and the point of diversion of the Columbia Southern Canal being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 2, Township 18 South, Range 10 East, W. M. The right to the use of water from Tumalo Creek for the irrigation of these lands is limited to a rate of flow of one-seventieth of one cubic foot per second per acre and the quantity of water diverted during the irrigation season from April 15 to October 15 of each year is limited to a diversion of not to exceed 1.8 acre feet per acre.

In the Deschutes River adjudication proceedings the Deschutes County Municipal Improvement District was adjudicated a right to the use of 9.5 cubic feet per second of the waters of Deschutes River with a date of priority of 1905, which right was made appurtenant to all lands within the district.

Permit No. 19628 issued to the Deschutes County Municipal Improvement District, is for a supplemental supply of water from Tumalo Creek, Crater Creek, Little Crater Creek and three springs for the irrigation of, among other lands, 33 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and 13.7 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 16, Township 16 South, Range 12 East, W. M., and for a primary right for the irrigation of 3.3 acres in said NW $\frac{1}{4}$ NW $\frac{1}{4}$.

Agreements dated November 4, 1950 and April 4, 1956 between the City of Bend and Deschutes County Municipal Improvement District provide that the right to the use of water from Tumalo Creek only for the irrigation of 52.6 acres of the 55.2 acres described in paragraph 2 hereof, is to be transferred to the City of Bend for municipal purposes. The agreements further provide that the City of Bend will perpetually pay to the Deschutes County Municipal Improvement District the annual assessments for operation and maintenance, the payment of outstanding indebtedness including outstanding bonds, and for replacements and capital repairs on the basis of 52.6 acres, each acre to be assessed equally as all other lands within the district are assessed.

It is the desire of the district to divest the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 16, Township 16 South, Range 12 East, W. M., of all remaining water rights except for 2.6 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, said Section 16. That part of the 9.5 cubic feet per second right from Deschutes River appurtenant to the above lands, except said 2.6 acres, is to be transferred to the remaining lands within the district and that part of the right from Tumalo, Crater and Little Crater Creeks and three springs under Permit No. 19628, except for the irrigation of said 2.6 acres, is to be eliminated from the permit.

The applicant herein, owner of 33 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and 19.6 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 16, Township 16 South, Range 12 East, W. M., proposes to transfer the water right from Tumalo Creek with a priority of September 1900 for irrigation purposes to that of municipal use within the corporate limits

of the City of Bend, Oregon and surrounding territory served by its water supply pipeline and to divert the water at the City of Bend's intake from Tumalo Creek in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 7, Township 18 South, Range 10 East, W. M.

Notice of the filing of the application was given by publication setting forth a time and place certain for hearing objections to the proposed change in use, place of use and point of diversion of water, if any there were, namely: at the county courthouse in Bend, Oregon on October 10, 1957, beginning at 9:30 o'clock a.m. The notice was published in the Bend Bulletin, a newspaper printed and having general circulation in Deschutes County, Oregon, for a period of three weeks in the issues of August 16, 23 and 30, 1957. The date set for hearing in said notice was not less than thirty days after the last publication of the notice.

No objections having been filed and it appearing that the proposed change in use, place of use and point of diversion of water may be made without injury to existing rights, the application should be approved.

NOW, THEREFOPE, it hereby is ORDERED that the water right from Tumalo Creek hereinbefore described as appurtenant to 33 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and 19.6 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 16, Township 16 South, Range 12 East, W. M., with a date of priority of September 1900, be severed therefrom and simultaneously and without loss of priority transferred to the City of Bend, Oregon for municipal use within the corporate limits of the said city and surrounding territory served by its water supply pipelines and said water shall be diverted at the City of Bend's intake from Tumalo Creek located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 7, Township 18 South, Range 10 East, W. M.

It is FURTHER ORDERED that the water so transferred shall be applied to beneficial use by the City of Bend, Oregon, on or before October 1, 1965 or within such extension of time as may be granted by the State Engineer for good cause shown.

It is FURTHER ORDERED that the quantity of water heretofore used for the irrigation of 52.6 acres from Tumalo Creek described in paragraph 7 hereof and by this order transferred to municipal purposes by the City of Bend, Oregon, shall be limited to a maximum diversion of 0.75 cubic foot per second, beginning on April 15 and ending on October 15 of each year, and the total quantity diverted during said period shall not exceed 94.68 acre feet, measured at the existing meters in the city's parallel pipelines.

It is FURTHER ORDERED that that part of the right to the use of 9.5 cubic feet per second of the waters of Deschutes River with a date of priority of 1905, appurtenant to the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 16, Township 16 South, Range 12 East, W. M., except for 2.6 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, be severed therefrom and simultaneously and without loss of priority transferred to the remaining lands having water rights within the Deschutes County Municipal Improvement District.

It is FURTHER ORDERED that the following described lands be eliminated from Permit No. 19628, to-wit: 36.3 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and 11.1 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 16, Township 16 South, Range 12 East, W. M.

It is FURTHER ORDERED that when certificates of water right are issued confirming the rights to the use of the waters of Tumalo Creek and its tributaries, a certificate of water right shall be issued to the Deschutes County Municipal Improvement District for the irrigation of 2.6 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 16, Township 16 South, Range 12 East, W. M., being the 2.6 acres not involved in this proceeding.

It is FURTHER ORDERED that upon receipt of proof satisfactory to the State Engineer of application of water to beneficial use for municipal purposes within the corporate limits of the City of Bend, Oregon, and surrounding territory served by its water supply pipelines, a certificate of water right

shall be issued to the City of Bend, Oregon, to the extent to which the water has been used beneficially.

Dated at Salem, Oregon this 7th day of April 1958.

Noted on Decree
Vol. 15 p. 322
Confirmed by
Cert. # 26508
and # 26050

Lewis A. Stanley
LEWIS A. STANLEY
State Engineer

Trsf. "B-103"